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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,803	01/24/2002	Anthony Jabar JR.	099505 /51061	9378

7590 10/20/2004
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EXAMINER

GRUNBERG, ANNE MARIE

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,803

Applicant(s)

JABAR ET AL.

Examiner

Anne Marie Grunberg

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-13 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-13 and 15-20 are pending. The amendments of 6/4/04 have been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections

1. Claims 1-3 remain rejected under the doctrine of provisional obviousness-type double patenting for the reasons stated in the last office action. Applicants indicate that a terminal disclaimer will be filed once allowable subject matter is indicated.

2. Claims 1-7, 16-17 and 19-20 remain rejected under 35 U.S.C. 102(b), for the reasons stated in the previous office action.

Applicants argue that their claims are different than that taught in McArdle et al because McArdle et al teach a formulation containing a herbicidal or herbicidal/pesticidal agent. This argument has been carefully considered however is not persuasive because the claim language is open due to the recitation "comprising". As such, it does not rule out the possible use of such agents. Additionally, at column 5, line 66, McArdle states that the plant protection agent is defined as a "herbicidal agent, a pesticidal agent or a foliar nutrient...". Therefore, McArdle does suggest and claim a peptide and polysaccharide complex in the absence of a herbicidal or pesticidal agent.

Applicants also argue that McArdle teaches a peptide-polysaccharide complex as a delivery system for other agents. This argument is also not persuasive because this is not correct. McArdle in claim 1 states a protein-polysaccharide complex along with a plant protection agent – not however as a delivery system for other agents.

3. Claims 8-13, 15 and 18 remain rejected under 35 U.S.C. 103(a), for the reasons stated in the previous office action.

Applicants argue that McArdle does not teach or suggest a crop seed or crop seed coating and that there is no motivation to combine. Applicants further argue that the crop seed coating of the present invention is dry and keeps our moisture whereas the crop seed coating exemplified in Redenbaugh et al is a water saturated hydrogel that contains free water.

These arguments have been carefully considered however are not persuasive for the following reasons. McArdle teaches an adjuvant that is physically separate from the seed. Redenbaugh et al point out that a system separate from the seed is costly as well as harmful (column 1, lines 59-64, for example). Additionally, the composition that is physically separate from the seed is not precisely applied to where the growing seed needs it the most (column 1, lines 65-68, column 2, lines 1-10). As a result, It would have been prima facie obvious to a person of ordinary skill in the art at the time the invention was made to attach the protein-polysaccharide delivery composition directly to the seed given the benefits of such a system as taught by Redenbaugh et al.

The claims as written read on a crop seed that has been dusted with corn flour since corn flour contains zein at about 4-5% by weight with most of the rest of the flour made up of

Art Unit: 1661

polysaccharides. Such a treated seed would not be dry since corn flour absorbs water. As a result, the dry seed coating argument is not persuasive.

No claim is allowed.

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne Marie Grunberg whose telephone number is (571) 272-0975. The examiner can normally be reached Monday through Friday from 8:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang, can be reached on (571) 272-0811. The fax phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.


ANNE MARIE GRUNBERG
PRIMARY EXAMINER